

SB0207S01 compared with SB0207

~~text~~ shows text that was in SB0207 but was deleted in SB0207S01.

text shows text that was not in SB0207 but was inserted into SB0207S01.

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Senator Kathleen A. Riebe proposes the following substitute bill:

CONSUMER PROTECTION AMENDMENTS

2021 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Kathleen A. Riebe

House Sponsor: _____

LONG TITLE

General Description:

This bill modifies the Price Controls During Emergencies Act.

Highlighted Provisions:

This bill:

- ▶ defines terms;
- ▶ prohibits a business that provides certain cleanup services from charging a vulnerable consumer an unconscionable price for a good or service;
- ▶ empowers the Division of Consumer Protection to enforce the provisions of this bill;
- ▶ directs money received from fines and judgments to be deposited into the Governor's Suicide Prevention Fund; and
- ▶ makes technical and conforming changes.

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Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

13-2-1, as last amended by Laws of Utah 2020, Chapter 118

13-41-101, as enacted by Laws of Utah 2005, Chapter 306

13-41-102, as last amended by Laws of Utah 2013, Chapter 295

13-41-202, as last amended by Laws of Utah 2006, Chapter 153

62A-15-1103, as enacted by Laws of Utah 2018, Chapter 414

ENACTS:

13-41-301, Utah Code Annotated 1953

13-41-302, Utah Code Annotated 1953

Be it enacted by the Legislature of the state of Utah:

Section 1. Section **13-2-1** is amended to read:

13-2-1. Consumer protection division established -- Functions.

(1) There is established within the Department of Commerce the Division of Consumer Protection.

(2) The division shall administer and enforce the following:

- (a) Chapter 5, Unfair Practices Act;
- (b) Chapter 10a, Music Licensing Practices Act;
- (c) Chapter 11, Utah Consumer Sales Practices Act;
- (d) Chapter 15, Business Opportunity Disclosure Act;
- (e) Chapter 20, New Motor Vehicle Warranties Act;
- (f) Chapter 21, Credit Services Organizations Act;
- (g) Chapter 22, Charitable Solicitations Act;
- (h) Chapter 23, Health Spa Services Protection Act;
- (i) Chapter 25a, Telephone and Facsimile Solicitation Act;
- (j) Chapter 26, Telephone Fraud Prevention Act;

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- (k) Chapter 28, Prize Notices Regulation Act;
- (l) Chapter 32a, Pawnshop and Secondhand Merchandise Transaction Information Act;
- (m) Chapter 34, Utah Postsecondary Proprietary School Act;
- (n) Chapter 34a, Utah Postsecondary School State Authorization Act;
- (o) Chapter 39, Child Protection Registry;
- (p) Chapter 41, Price Controls [~~During Emergencies~~] Act;
- (q) Chapter 42, Uniform Debt-Management Services Act;
- (r) Chapter 49, Immigration Consultants Registration Act;
- (s) Chapter 51, Transportation Network Company Registration Act;
- (t) Chapter 52, Residential Solar Energy Disclosure Act;
- (u) Chapter 53, Residential, Vocational and Life Skills Program Act;
- (v) Chapter 54, Ticket Website Sales Act;
- (w) Chapter 56, Ticket Transferability Act; and
- (x) Chapter 57, Maintenance Funding Practices Act.

Section 2. Section **13-41-101** is amended to read:

CHAPTER 41. PRICE CONTROLS ACT

13-41-101. Title.

This chapter is known as the "Price Controls [~~During Emergencies~~] Act."

Section 3. Section **13-41-102** is amended to read:

13-41-102. Definitions.

For purposes of this chapter:

- (1) "Consumer" means a person who acquires a good or service for consumption.
- (2) "Division" means the Division of Consumer Protection.
- (3) (a) "Emergency territory" means the geographical area:
 - (i) for which there has been a state of emergency declared; and
 - (ii) that is directly affected by the events giving rise to a state of emergency.
- (b) "Emergency territory" does not include a geographical area that is affected by the events giving rise to a state of emergency only by economic market forces.
- (4) "Excessive price" means a price for a good or service that exceeds by more than 10% the average price charged by that person for that good or service in the 30-day period immediately preceding the day on which the state of emergency is declared.

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(5) "Good" means any personal property displayed, held, or offered for sale by a merchant that is necessary for consumption or use as a direct result of events giving rise to a state of emergency.

(6) "Retail" means the level of distribution where a good or service is typically sold directly, or otherwise provided, to a member of the public who is an end user and does not resell the good or service.

(7) "Service" means any activity that is performed in whole or in part for the purpose of financial gain including personal service, professional service, rental, leasing, or licensing for use that is necessary for consumption or use as a direct result of events giving rise to a state of emergency.

(8) "State of emergency" means a declaration of:

- (a) an emergency or major disaster by the president of the United States of America; or
- (b) a state of emergency by the governor under Section 53-2a-206.

(9) (a) "Unconscionable price" means a price of a good or service that is substantially above the average price at which the good or service is readily obtainable by other consumers in the trade area.

(b) "Unconscionable price" does not include a price that is directly related to an increase in the seller's cost of providing the emergency, disaster, or death cleanup good or service, including:

(i) direct costs of providing the good or service, including additional costs imposed by one or more of the seller's suppliers;

(ii) increased costs due to normal fluctuations in an applicable market; or

(iii) increased costs caused by a legitimate business decision.

(10) "Vulnerable consumer" means a consumer whose need for an emergency, disaster, or death cleanup service puts the consumer in a vulnerable state.

Section 4. Section 13-41-202 is amended to read:

Part 2. Excessive Prices During Emergencies Prohibited

13-41-202. Enforcement -- Penalty.

(1) The division shall enforce this [~~chapter~~] part.

(2) In determining whether to impose penalties against a person who violates [~~this chapter~~] Section 13-41-201, the division shall consider:

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(a) the person's cost of doing business not accounted for in the cost to the person of the good or service, including costs associated with a decrease in the supply available to a person who relies on a high volume of sales;

(b) the person's efforts to comply with [~~this chapter~~] Section 13-41-201;

(c) whether the average price charged by the person during the 30-day period immediately preceding the day on which the state of emergency is declared is artificially deflated because the good or service was on sale for a lower price than the person customarily charges for the good or service; and

(d) any other factor that the division considers appropriate.

(3) (a) If the division finds that a person has violated, or is violating, [~~this chapter~~] Section 13-41-201, the division may:

(i) issue a cease and desist order; and

(ii) subject to Subsection (3)(b), impose an administrative fine of up to \$1,000 for each violation of [~~this chapter~~] Section 13-41-201.

(b) Each instance of charging an excessive price under Section 13-41-201 constitutes a separate violation, but in no case shall the administrative fine imposed under Subsection (3)(a) exceed \$10,000 per day.

(4) The division may sue in a court of competent jurisdiction to enforce an order under Subsection (3).

(5) In a suit brought under Subsection [~~(3)~~] (4), if the division prevails, the court may award the division:

(a) court costs;

(b) attorney fees; and

(c) the division's costs incurred in the investigation of the violation of [~~this chapter~~] Section 13-41-201.

(6) All money received through an administrative fine imposed, or judgment obtained, under this section shall be deposited [in] into the Consumer Protection Education and Training Fund created by Section 13-2-8.

Section 5. Section **13-41-301** is enacted to read:

Part 3. Unconscionable Price for Cleanup Services Prohibited

13-41-301. Unconscionable price for cleanup services prohibited.

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~~{(1)}~~ A person who provides emergency, disaster, or death scene cleanup services to a vulnerable consumer may not charge the vulnerable consumer an unconscionable price for a good or service used in the person's emergency, disaster, or death scene cleanup services.

~~{~~ (2) A price is not an unconscionable price if the seller demonstrates that the price is directly related to an increase in the person's cost of providing the emergency, disaster, or death cleanup service, including:

- ~~—~~ (a) additional costs imposed by one or more of the seller's suppliers;
- ~~—~~ (b) other direct costs of providing the good or service; or
- ~~—~~ (c) increased costs due to normal fluctuations in an applicable market.

~~}~~ Section 6. Section **13-41-302** is enacted to read:

13-41-302. Enforcement -- Penalty.

(1) The division shall enforce this part.

(2) (a) If the division finds that a person has violated, or is violating, Section 13-41-301, the division may:

- (i) issue a cease and desist order; and
- (ii) impose an administrative fine of up to \$10,000 for each violation of Section

13-41-301.

(b) Each instance of charging an excessive price under Section 13-41-301 is a separate violation.

(3) The division may sue in a court of competent jurisdiction to enforce an order under Subsection (2).

(4) If the division prevails in a suit brought under Subsection (3), the court may award the division:

- (a) court costs;
- (b) attorney fees; and
- (c) the division's costs incurred in investigating the violation of Section 13-41-301.

(5) All money received through an administrative fine imposed, or judgment obtained, under this section shall be deposited into the Governor's Suicide Prevention Fund created in Section 62A-15-1103.

Section 7. Section **62A-15-1103** is amended to read:

62A-15-1103. Governor's Suicide Prevention Fund.

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(1) There is created an expendable special revenue fund known as the Governor's Suicide Prevention Fund.

(2) The fund shall consist of:

(a) gifts, grants, and bequests of real property or personal property made to the fund[.];

and

(b) contributions deposited into the fund in accordance with Section 13-41-302.

(3) A donor to the fund may designate a specific purpose for the use of the donor's donation, if the designated purpose is described in Subsection (4) or 62A-15-1101(3).

(4) Subject to Subsection (3), money in the fund shall be used for the following activities:

(a) efforts to directly improve mental health crisis response;

(b) efforts that directly reduce risk factors associated with suicide; and

(c) efforts that directly enhance known protective factors associated with suicide reduction.

(5) The division shall establish a grant application and review process for the expenditure of money from the fund.

(6) The grant application and review process shall describe:

(a) requirements to complete a grant application;

(b) requirements to receive funding;

(c) criteria for the approval of a grant application;

(d) standards for evaluating the effectiveness of a project proposed in a grant application; and

(e) support offered by the division to complete a grant application.

(7) The division shall:

(a) review a grant application for completeness;

(b) make a recommendation to the governor or the governor's designee regarding a grant application;

(c) send a grant application to the governor or the governor's designee for evaluation and approval or rejection;

(d) inform a grant applicant of the governor or the governor's designee's determination regarding the grant application; and

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(e) direct the fund administrator to release funding for grant applications approved by the governor or the governor's designee.

(8) The state treasurer shall invest the money in the fund under Title 51, Chapter 7, State Money Management Act, except that all interest or other earnings derived from money in the fund shall be deposited into the fund.

(9) Money in the fund may not be used for the Office of the Governor's administrative expenses that are normally provided for by legislative appropriation.

(10) The governor or the governor's designee may authorize the expenditure of fund money in accordance with this section.

(11) The governor shall make an annual report to the Legislature regarding the status of the fund, including a report on the contributions received, expenditures made, and programs and services funded.